



Reprinted  
February 20, 2001

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## HOUSE BILL No. 1181

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DIGEST OF HB 1181 (Updated February 19, 2001 3:51 PM - DI 98)

**Citations Affected:** IC 8-1.

**Synopsis:** IURC enforcement authority. Gives the Indiana utility regulatory commission (IURC) authority to impose certain penalties on a utility that violates Indiana utility law or fails to comply with an order of the commission. Provides for the deposit of revenue collected through monetary penalties in the public utility fund account. Requires the commission to provide to the regulatory flexibility committee a report detailing the distribution of the penalties. Authorizes the commission to order a utility to provide service within 24 hours if the commission or division determines that the provision of service is necessary to prevent injury to any person or to alleviate an emergency except under certain circumstances outside the control of the utility. Provides that each day a utility fails to provide service after ordered by the commission or division is a separate violation for purposes of the commission's authority to impose monetary penalties. Provides that the commission may require a public utility to post a reasonable performance bond as a condition of doing business in Indiana. Defines the term "violation".

**Effective:** July 1, 2001.

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### Fry, Yount, Pelath, Crooks, Ulmer

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January 9, 2001, read first time and referred to Committee on Commerce, Economic Development and Technology.  
February 8, 2001, amended, reported — Do Pass.  
February 19, 2001, read second time, amended, ordered engrossed.

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HB 1181—LS 7406/DI 75+



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First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

## HOUSE BILL No. 1181

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A BILL FOR AN ACT to amend the Indiana Code concerning utilities.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 8-1-2-115.1 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2001]: **Sec. 115.1. (a) As used in this section, "utility" refers to a**  
4 **public utility over which the commission has jurisdiction or the**  
5 **department of public utilities created under IC 8-1-11.1.**

6       **(b) If, after notice and hearing, the commission finds that a**  
7 **utility has:**

8               **(1) violated a provision of this title over which the commission**  
9               **has jurisdiction;**

10              **(2) failed to comply with any determination, requirement,**  
11              **direction or order of the commission made pursuant to this**  
12              **title; or**

13              **(3) failed to comply with an administrative rule promulgated**  
14              **by the commission pursuant to this title;**

15       **the commission may act as provided in subsection (c) or (e).**

16       **(c) Except as provided in subsection (d) of this section, the**  
17 **commission may issue an order that does one (1) or more of the**

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following if the commission makes a finding under subsection (b):

(1) Impose a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each violation or noncompliance. For purposes of this subdivision, the commission may consider each day a violation or noncompliance occurs to be a separate violation or noncompliance.

(2) Impose a civil penalty of not more than three percent (3%) of the annual gross intrastate operating regulated revenue derived from the regulated activity of the utility. A utility's gross intrastate operating revenue shall be determined from the most recent public utility annual report filed under IC 8-1-6-5.

(3) Issue an order that the utility cease and desist from the violation or noncompliance.

(4) Issue an order mandating corrective action to alleviate the violation or noncompliance.

(5) Revoke or modify the terms of the utility's certificate of territorial authority, certificate of public convenience and necessity, or other permit issued by the commission.

(6) The civil penalty imposed under this section shall not exceed two million five hundred thousand dollars (\$2,500,000) per calendar month.

No utility shall be subject to both a penalty under this section and a penalty under a commission approved settlement agreement for the same violation or noncompliance. If the commission approves a settlement agreement that includes penalties or remedies for noncompliance with specific provisions of the settlement agreement, then the remedies provided in this section shall not apply to those violations or noncompliance during the lifetime of the settlement agreement.

(e) The commission shall consider the following when determining the appropriateness of the amount of a civil penalty or compromise amount:

(1) The size of the utility.

(2) The gravity of the violation or noncompliance.

(3) The good faith of the utility in attempting to remedy the violation or achieve compliance after receiving notification of the violation or noncompliance.

(f) This section shall not apply when the violation or failure of the utility was caused by any of the following:

(1) Customer provided equipment.



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(2) The negligent act of a customer.

(3) An emergency situation.

(4) An unavoidable casualty.

(5) An act of God.

(g) The attorney general shall bring an action in the name of the state of Indiana to enforce an order of the commission under subsection (c), including the collection of an unpaid civil penalty imposed by the commission under subsection (c)(1) or (c)(2). The attorney general shall bring the action in a court that has jurisdiction.

(h) All civil penalties accruing under this section are cumulative. A suit for recovery of one (1) civil penalty does not bar or affect:

(1) the recovery of any other civil penalty or forfeiture; or

(2) a criminal prosecution against:

(A) a public utility;

(B) an officer, a director, an agent, or an employee of a public utility; or

(C) any other person.

(i) The secretary of the commission shall direct any civil penalties collected under this section as follows:

(1) Penalties assessed for violations that directly affect ratepayers shall be refunded directly to the customers of the subject utility in the form of credits on customer bills.

(2) Penalties assessed for violations that directly harm another utility shall be awarded directly to the other utility.

(3) Penalties assessed for violations that do not directly affect ratepayers or harm another utility shall be deposited into the commission public utility fund account established under IC 8-1-6.

(j) The commission shall use penalties deposited into the utility fund account for:

(1) consumer education;

(2) promotion of utility competition; or

(3) any other purpose deemed by the commission to further the public interest.

(k) The commission shall provide to the regulatory flexibility committee a report detailing how penalties deposited into the public utility fund account were distributed.

(l) Penalties deposited into the public utility fund account shall not be included in:

(1) the calculation of the difference between actual expenditures and appropriations described in IC 8-1-6-1(b);

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(2) any public utility fee credit.

(m) The authority granted under this section is in addition to, and may be exercised independently of, any other authority granted under this article.

SECTION 2. IC 8-1-2-128 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 128. (a) As used in this section, "utility" refers to a public utility over which the commission has jurisdiction or the department of public utilities created under IC 8-1-11.1.**

(b) If the commission:

(1) determines that the provision of utility service is necessary to prevent injury to any person or to alleviate an emergency; and

(2) directs a utility to provide utility service; the utility shall provide utility service within twenty-four (24) hours after receiving direction from the commission.

(c) If the commission finds that a utility has violated subsection (b), each day that the utility fails to provide service as directed by the commission is considered a separate violation for purposes of imposing civil penalties under section 115.1 of this chapter.

SECTION 3. IC 8-1-2-129 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 129. The commission may require a public utility to post a reasonable performance bond as a condition of the public utility's operation in Indiana. The reasonable performance bond shall not exceed two million dollars (\$2,000,000).**

SECTION 4. IC 8-1-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 2. (a) All fees herein prescribed shall be paid into the treasury of the state of Indiana through the secretary of the commission and quietused into an account to be known as the commission public utility fund account. This account shall be used for enforcing the provisions of IC 8-1-1 and IC 8-1-2 and shall be utilized only for the purpose of funding the expenses of the commission and the consumer counselor in amounts not in excess of their respective appropriations by the general assembly, plus the contingency fund. All appropriations under this chapter paid out of the commission public utility fund account shall be subject to the prior approval of the general assembly, the governor, and the state budget agency.**

(b) **The following shall also be deposited in the commission public utility fund account:**

(1) Fees collected from municipalities under IC 8-1-2-85. ~~shall~~



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- 1 also be deposited in the commission public utility fund account;
- 2 as if they were fees collected from public utilities under this
- 3 chapter.
- 4 **(2) Civil penalties collected under IC 8-1-2-115.1.**

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Commerce, Economic Development and Technology, to which was referred House Bill 1181, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 3, delete "As used in this section, "order" refers to an".

Page 1, delete lines 4 through 5.

Page 1, line 6, delete "(b)".

Page 1, run in lines 3 and 6.

Page 1, line 8, delete "(c)" and insert **"(b)"**.

Page 1, line 11, delete "or".

Page 1, line 12, delete "part of an order;" and insert **"determination, requirement, direction or order of the commission made pursuant to this title; or**

**(3) failed to comply with an administrative rule promulgated by the commission pursuant to this title;"**.

Page 1, line 14, delete "(d)" and insert **"(c)"**.

Page 2, line 6, delete "fifteen" and insert **"three"**.

Page 2, line 7, delete "(15%)" and insert **"(3%)"**.

Page 2, between lines 25 and 26, begin a new paragraph and insert: **"(f) This section shall not apply when the violation or failure of the utility was caused by any of the following:**

**(1) Customer provided equipment.**

**(2) The negligent act of a customer.**

**(3) An emergency situation.**

**(4) An unavoidable casualty.**

**(5) An act of God."**

Page 2, line 26, delete "(f)" and insert **"(g)"**.

Page 2, line 26, delete "may" and insert **"shall"**.

Page 2, line 30, delete "may" and insert **"shall"**.

Page 2, line 32, delete "(g)" and insert **"(h)"**.

Page 2, delete lines 40 through 42 and insert the following:

**"(i) The secretary of the commission shall direct any civil penalties collected under this section as follows:**

**(1) Penalties assessed for violations that directly affect ratepayers shall be refunded directly to the customers of the subject utility in the form of credits on customer bills.**

**(2) Penalties assessed for violations that directly harm another utility shall be awarded directly to the other utility.**

**(3) Penalties assessed for violations that do not directly affect ratepayers or harm another utility shall be deposited into the**



commission public utility fund account established under IC 8-1-6.

(j) The commission shall use penalties deposited into the utility fund account for:

- (1) consumer education;
- (2) promotion of utility competition; or
- (3) any other purpose deemed by the commission to further the public interest.

(k) The commission shall provide to the regulatory flexibility committee a report detailing how penalties deposited into the public utility fund account were distributed.

(l) Penalties deposited into the public utility fund account shall not be included in:

- (1) the calculation of the difference between actual expenditures and appropriations described in IC 8-1-6-1(b); or
- (2) any public utility fee credit."

Page 3, line 1, delete "(i)" and insert "(m)".

Page 3, line 8, delete "commission or a division of the".

Page 3, line 14, delete "the commission or division of".

Page 3, run in lines 14 and 15.

Page 3, line 18, delete "or a division of the commission".

Page 4, delete lines 3 through 4.

and when so amended that said bill do pass.

(Reference is to HB 1181 as introduced.)

FRY, Chair

Committee Vote: yeas 8, nays 5.

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## HOUSE MOTION

Mr. Speaker: I move that House Bill 1181 be amended to read as follows:

Page 1, line 4, after "jurisdiction" insert **"or the department of public utilities created under IC 8-1-11.1"**.

Page 3, line 38, after "jurisdiction" insert **"or the department of public utilities created under IC 8-1-11.1"**.

(Reference is to HB 1181 as printed February 9, 2001.)

FRY

## HOUSE MOTION

Mr. Speaker: I move that House Bill 1181 be amended to read as follows:

Page 1, line 14, delete **"(d)"** insert **"(c) or (e)"**.

Page 1, line 15, after **"(c)"** insert **"Except as provided in subsection (d) of this section, the"** and delete **"The"**.

Page 1, line 17, delete **"(c)"** and insert **"(b)"**.

Page 2, line 8, before **"revenue"** insert **"regulated"**, and after **"revenue"** insert **"derived from the regulated activity"**.

Page 2, between lines 18 and 19, begin a new line block indented and insert:

**"(6) The civil penalty imposed under this section shall not exceed two million five hundred thousand dollars (\$2,500,000) per calendar month."**

Page 2, between lines 18 and 19 insert:

**"No utility shall be subject to both a penalty under this section and a penalty under a commission approved settlement agreement for the same violation or noncompliance. If the commission approves a settlement agreement that includes penalties or remedies for noncompliance with specific provisions of the settlement agreement, then the remedies provided in this section shall not apply to those violations or noncompliance during the lifetime of the settlement agreement."**

Page 2, line 36, delete **"(d)"** and insert **"(c)"**.

Page 2, line 37, delete **"(d)(1) or (d)(2)"** and insert **"(c)(1) or (c)(2)"**.

Page 4, line 12, after **"Indiana"** insert **"The reasonable performance bond shall not exceed two million dollars"**



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**(\$2,000,000)."**

(Reference is to HB 1181 as printed February 9, 2001.)

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